

SILVERMAN | ATTORNEYS
& ASSOCIATES | AT LAW

August 31, 2020

VIA ECF

The Honorable Colleen McMahon
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: J.T. v. de Blasio, No. 1:20-cv-5878 (CM) (S.D.N.Y.)

Dear Judge McMahon:

We represent the Monroe-Woodbury Central School District (“Monroe-Woodbury”) in the captioned matter. This firm also represents other Boards of Education in the State of New York that have not yet been served with the Summons and Complaint. They do not join in this request, do not waive their right to respond to the Summons and Complaint within the time limits set forth in Rule 12, and expressly reserve and do not waive any other rights.

For the reasons explained below, and as previously requested by the Connecticut BOE Defendants, we respectfully request a brief extension of time to respond to the Complaint, a corresponding brief extension of time to respond to the Plaintiffs’ request for a temporary restraining order and preliminary injunction, and a structured approach to the Rule 12 motions in a manner that promotes judicial efficiency.

Plaintiffs have apparently applied for a temporary restraining order (“TRO”) and preliminary injunction (“PI”), though no motion papers have been filed on the docket. This Court has set a deadline of September 4, 2020 for Defendants to respond to Plaintiffs’ application for a TRO and PI and to file motions to dismiss, sever, transfer, or for other relief. (Docket No. 29; the “Order”). In the Order, this Court also directed Plaintiffs to serve a copy of the Order on Defendants or their counsel on or before August 24, 2020 at 10:00 a.m. (*Id.*)

As has been noted by other defendants that have previously written to the Court, there are multiple issues with the Summons and Complaint, including the absence of subject matter jurisdiction because Plaintiffs have failed to exhaust their administrative remedies, thereby depriving the Court of subject matter jurisdiction under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq. (“IDEA”).

In addition, there are challenges to be made as to personal jurisdiction over Monroe-Woodbury, the sufficiency of process, and the sufficiency of service. At the outset we note that Monroe-Woodbury has not been served with either the Summons and Complaint pursuant to the Federal Rules of Civil Procedure nor were the Order to Show Cause and underlying documents

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timely served by August 24, 2020 pursuant to the Order. Instead, via email correspondence on Saturday, August 29, 2020 at 12:09 a.m., directed to the Superintendent of Schools, the plaintiffs' counsel provided electronic copies of the Summons and Complaint, the proposed Order to Show Cause and the Order, which required all Defendants to respond by September 4, 2020, and a link to a website. A copy of the email correspondence from the plaintiffs' counsel to the Superintendent is attached to this letter as Exhibit "A."

We join in the request by the Connecticut BOE Defendants and respectfully request a two-week extension of the September 4, 2020 deadline set by the Order to respond to the Complaint until September 18, 2020. In light of the various jurisdictional and procedural issues, we respectfully submit that the interests of justice and judicial economy will be best served if we are able to first brief the procedural and jurisdictional defects with the Summons and Complaint before addressing the insufficiency of the allegations in the Complaint. For all of these reasons, we respectfully request:

- (1) a deadline of September 5, 2020 for Plaintiffs to file the motion papers in support of Plaintiffs' application for a TRO and PI;
- (2) an extension until September 18, 2020 to file motions to dismiss directed at procedural and jurisdictional issues under Rule 12(b)(1)-12(b)(5);
- (3) an extension until September 25, 2020 to respond to the Plaintiffs' application for a TRO and PI; and
- (4) a deadline of 21 days following this Court's ruling on procedural and jurisdictional motions to dismiss to file Rule 12(b)(6) motions.

This is the first request for an adjournment or extension of any of the deadlines set forth herein. The above proposed schedule affects the scheduled deadline of September 4, 2020 for Defendants' responsive pleading and response to Plaintiffs' application for a TRO and PI, which have not yet been filed. We join in the request for a proposed Revised Scheduling Order that was previously filed by the Connecticut BOE Defendants (Docket No. 40).

Thank you for your consideration of this matter.

Respectfully yours,

SILVERMAN & ASSOCIATES

Lewis R. Silverman

LRS/hj

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cc: All Counsel of Record (**Via ECF**)